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11 *Attorneys for Plaintiffs and the Putative Classes*

12  
13 **UNITED STATES DISTRICT COURT**  
14 **NORTHERN DISTRICT OF CALIFORNIA**  
15 **SAN FRANCISCO DIVISION**

16 REBEKAH BAHARESTAN and JENA  
17 MCINTYRE, on behalf of themselves and all  
others similarly situated,

18 Plaintiffs,

19 v.

20 VENUS LABORATORIES, INC., dba EARTH  
21 FRIENDLY PRODUCTS, INC.,

22 Defendant.  
23  
24  
25  
26  
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Case No. 3:15-cv-03578-EDL

**DECLARATION OF MARK N.  
TODZO IN SUPPORT OF MOTION  
FOR PRELIMINARY APPROVAL  
OF CLASS ACTION SETTLEMENT  
AGREEMENT**

Date: November 3, 2015

Time: 10:00 a.m.

Location: Courtroom E

Judge: Hon. Elizabeth D. Laporte

1 I, Mark N. Todzo, declare:

2 1. I am an attorney with the Lexington Law Group (“LLG”), and I represent Plaintiff  
3 Rebekah Baharestan in the above-captioned action. I have been working together with Melissa  
4 Wolchansky with Halunen Law, which represents plaintiff Jena McIntyre in this action. I have  
5 personal knowledge of the matters set forth below and, if called upon, I could and would  
6 competently testify thereto.

7 2. I am one of the attorneys who has been principally involved in the prosecution of  
8 this litigation and the negotiations that culminated in the Stipulation of Settlement (the “Settlement  
9 Agreement” or “Settlement”) which is before the Court for preliminary approval. A true and  
10 correct copy of the Settlement Agreement, signed by the Parties to this case, is attached as Exhibit  
11 1. The Settlement Agreement itself appends and incorporates seven exhibits, entitled “Exhibit A”  
12 through “Exhibit G,” which I have included as part of Exhibit 1.

13 3. Defendant Venus Laboratories, Inc., d/b/a Earth Friendly Products, Inc.’s,  
14 (“Venus”) manufactures, sells, and distributes the Earth Friendly line of household cleaning  
15 products, including dozens of laundry detergents, odor removers, dishwashing fluids, and other  
16 home cleaning products. These Products are sold through third party retailers to consumers in all  
17 50 states and the District of Columbia. Plaintiffs allege they were induced to purchase the Earth  
18 Friendly Products by Venus’ false and misleading representations that the Products were natural,  
19 derived from plants, free from harmful chemicals, “organic,” and/or gentle. However, each Earth  
20 Friendly Product contains at least one chemical that is, in fact, highly processed, synthetic, and/or  
21 not organic or natural. These chemicals include: MIT, Alcohol Denat, Caprylyl/Myristyl  
22 Glucoside, Cocamidopropyl Betaine, Cocamidopropylamine Oxide, Lauryl Glucoside,  
23 Phenoxyethanol, Potassium Cocoate, Potassium Sorbate, or Sodium Coco-Sulfate.

24 4. In particular, MIT, a biocide used for controlling microbial growth in water-  
25 containing solutions, is neither natural nor made from plants since it is produced by the controlled  
26 chlorination of dimethyldithiodipropionamide (DPAM) in solvent, followed by neutralization and  
27 extraction into water. MIT has been linked to what is called an “epidemic” of painful skin  
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1 allergies, including rashes, blistering, swelling, redness, and hives. The rapidly increasing rates of  
 2 allergic reactions to MIT resulted in the American Contact Dermatitis Society naming MIT as the  
 3 contact allergen of the year in 2013. Numerous studies from countries all over the world quantify  
 4 the epidemic of allergic reactions to MIT as being so serious as to occur in 2 to 10 percent of  
 5 individuals exposed to the chemical

6 5. Before commencing this action, Class Counsel conducted an examination and  
 7 evaluation of the relevant laws and facts to assess the merits of the claims and to determine how to  
 8 best serve the interests of the members of the Class.

9 6. On November 3, 2014, Plaintiff Jena McIntyre sent a letter notifying Venus of her  
 10 intent to pursue consumer protection claims on behalf of herself and a nationwide class of  
 11 purchasers of the Earth Friendly Products throughout the United States based on allegations that  
 12 Venus misrepresented the nature of the Products. After receiving this letter, Venus began  
 13 discussing a possible resolution of Plaintiff McIntyre's claims.

14 7. On March 25, 2015, independently of Plaintiff McIntyre, Plaintiff Rebekah  
 15 Baharestan sent a letter to Venus alleging that Venus' marketing, advertising, and labeling of the  
 16 Products false and misleading. This letter informed Venus of Plaintiff Baharestan's intent to  
 17 represent a nationwide class of purchasers of the Earth Friendly Products in a class action lawsuit.

18 8. The Parties subsequently engaged in lengthy, comprehensive, and arm's-length  
 19 settlement discussions over several months. During the Parties' lengthy and comprehensive  
 20 settlement discussions, the Parties engaged in substantial informal discovery. Through this  
 21 discovery, Venus provided Plaintiffs with vital information pertaining to the legitimacy and scope  
 22 of Plaintiffs' claims—including information regarding the Products' labeling and ingredients. This  
 23 exchange of information ensured sophisticated and meaningful settlement negotiations.

24 9. These settlement discussions culminated in an all-day, in person, mediation before  
 25 the Honorable Morton Denlow (Ret.) in Chicago, Illinois on June 1, 2015. The Honorable Morton  
 26 Denlow, who is a former Magistrate Judge for the United States District Court, Northern District  
 27 of Illinois, has decades of experience in the resolution of complex commercial litigation, including  
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1 class actions and product liability cases. A true and correct copy of the Honorable Morton  
2 Denlow's general biography is attached hereto as Exhibit 2. Based upon Plaintiffs' investigation  
3 and evaluation of the facts and law relating to the matters alleged in this case, the Parties agreed to  
4 settle this action pursuant to the provisions of the Settlement. Such agreement was reached after  
5 considering, among other things: (1) the substantial benefits available to the Class under the terms  
6 of the Settlement; (2) the attendant risks and uncertainty of litigation—especially in complex  
7 actions such as this—as well as the difficulties and delays inherent in such litigation; and (3) the  
8 desirability of promptly completing the Settlement to provide effective relief to Plaintiffs and the  
9 Class.

10 10. In my firm's capacity as Class Counsel, we considered a number of factors in  
11 reaching the proposed Settlement Agreement with Defendant. For example, among other issues,  
12 we considered the risk that Defendant's use of the word "natural" on the Products would not be  
13 found to be misleading to a reasonable consumer.

14 11. By settling now, Settlement Class Members secure meaningful monetary  
15 compensation, plus the certainty of knowing Venus' alleged deceptive labeling and marketing  
16 practices will cease on a nationwide basis after the Settlement is approved. Extrapolating from  
17 sales information provided by Venus in settlement discussions, Class counsel has determined that  
18 the number of persons who purchased the Products and were affected by these practices is in the  
19 thousands. These benefits will equally accrue to all Settlement Class Members. Given the vagaries  
20 of pressing forward with litigation, the Settlement has no "obvious deficiencies" and treats all  
21 Settlement Class Members fairly.

22 12. In agreeing to a Settlement Fund in the minimum amount of \$850,000, and up to  
23 \$950,000, Class Counsel also considered the difficulties the Class will face in proving damages at  
24 trial. Plaintiffs contend that they could use a damages model to recover reasonable Class-wide  
25 damages at trial that would exceed the amount of the Settlement Fund. However, Venus disputes  
26 that it charged any premium for its allegedly "natural" or "organic" Earth Friendly Products, and  
27 claims that its Products are actually sold at a discount price compared to other national brands.

1 While Plaintiffs believe their damages calculation is viable, in agreeing to the Settlement Plaintiffs  
2 took into account the additional risk (beyond class certification and liability risks) that Class  
3 members would not be able to prove their damages at trial. Given this litigation risk, the \$850,000  
4 monetary recovery represents a substantial percentage of what Plaintiffs believe to be their best  
5 case scenario for recovery at trial.

6 13. Plaintiffs McIntyre and Baharestan have performed a number of tasks that greatly  
7 assisted in the preparation, prosecution and settlement of the case. Among other things, these  
8 Plaintiffs have consulted with me and other Class Counsel on a number of occasions, made  
9 themselves available as needed, provided factual background to assist in the development of the  
10 case and the pre-suit letters notifying Defendant of their intent to bring a suit for violations of  
11 consumer protection statutes, and reviewed pleadings and correspondence in the case and  
12 evaluated the Settlement papers. To date, neither Plaintiff has received any compensation  
13 whatsoever for their efforts on behalf of the Class.

14 14. Ms. Wolchansky and I, as well as others at our firms, spent numerous hours  
15 investigating and researching the facts of this case, conferring with Plaintiffs, researching  
16 applicable law, drafting pleadings, reviewing and analyzing documents and data produced by  
17 Venus and negotiating the Settlement Agreement. Class Counsel will submit support for the  
18 attorneys' fee and costs award called for by the Settlement in connection with the hearing for final  
19 approval of the Settlement. The proposed Settlement provides that Class Counsel may be awarded  
20 up to \$277,500 as partial compensation for Class Counsel's reasonable attorneys' fees and costs,  
21 which is less than the lodestar incurred by Class Counsel and well within the range of possible  
22 approval.

23 15. LLG is a private law firm that has been successfully pursuing cases on behalf of  
24 consumers and public interest groups for over a decade. LLG has represented numerous parties in  
25 civil actions of various types and degrees of complexity, including many cases brought as class  
26 actions. The attorneys of LLG have substantial experience in false advertising and unfair  
27 competition matters. The following is a representative sampling of some of the cases LLG has  
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1 successfully litigated or is currently involved in:

2 a) *Golloher, et al. v. Todd Christopher International, Inc.*, Case No. CV-12-  
3 06002 (N.D. Cal.): Class counsel in case involving misrepresentation of non-organic cosmetic  
4 products as organic;

5 b) *Stephenson, et al. v. Neutrogena Corporation*, Case No. C 12-00426 PJH  
6 (N.D. Cal.): Named Class Counsel in case involving misrepresentation of cosmetic products as  
7 “natural”;

8 c) *In re Comcast Peer to Peer (P2P) Transmission Contract Litigation*, Case  
9 No. 2:08-md-01992 (E.D. Pa.): Named Class Counsel in class action against Comcast for alleged  
10 breach of contract and false advertising arising from interference with subscribers’ use of peer to  
11 peer file sharing applications; obtained \$16 million settlement for the class;

12 d) *Dervaes v. California Physicians’ Service*, Case No. RG-06262733  
13 (Alameda County Super. Ct.): Counsel for plaintiff in class case challenging health insurer’s  
14 unilateral mid-year increase to calendar-year costs.

15 Attached hereto as Exhibit 3 is a true and correct copy of LLG’s firm resume.

16 16. Halunen Law has the requisite expertise as they have qualified as lead counsel in  
17 other class actions, and have a proven track record of successful prosecution of significant class  
18 actions. Halunen Law’s extensive experience and qualifications are further detailed in Halunen  
19 Law’s firm resume, attached hereto as Exhibit 4.

20 I declare under penalty of perjury under the laws of the United States that the  
21 foregoing is true and correct.

22 Executed on September 29, 2015, at San Francisco, California.

23 /s/ Mark N. Todzo

24 MARK N. TODZO